

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
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INDIANAPOLIS, INDIANA 46204-2764

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APPLICATION OF UTILITY CENTER, INC.,)
D/B/A AQUASOURCE, FOR ISSUANCE OF)
AN EXPANDED CERTIFICATE OF)
TERRITORIAL AUTHORITY TO RENDER)
SEWAGE DISPOSAL SERVICE IN RURAL)
AREAS IN ALLEN, HUNTINGTON COUNTY)
AND WHITLEY COUNTY, INDIANA,)
CONTIGUOUS TO AN AREA CURRENTLY)
SERVED BY IT.)

CAUSE NO. 42332

FILED

FEB 20 2004

INDIANA UTILITY
REGULATORY COMMISSION

You are hereby notified that on this date the Indiana Utility Regulatory Commission has caused the following entry to be made:

On February 9, 2004, Intervenor City of Fort Wayne filed with the Commission its "Verified Petition to Reopen the Record," which appears in the following words and figures, to-wit:

[H.I.]

In its Verified Petition, Intervenor requests that the Commission reopen the record in this matter for the limited purpose of taking judicial notice of a recent decision issued by the Indiana Court of Appeals in *City of North Vernon v. Jennings Northwest Reg'l Utilities*, 799 N.E.2d 1068 (Ind. Ct. App. December 5, 2003). In that case, the Court of Appeals determined that Indiana's Home Rule Act (I.C. 36-1-3-5) precluded the City of North Vernon from providing sewage disposal service within the regional sewer district's service territory. Intervenor claims that this is new law that could potentially negate one of Utility Center's arguments for receiving a larger CTA than it would immediately serve.

On February 12, 2004, Petitioner Utility Center, Inc. filed with the Commission its "Response in Opposition to City of Fort Wayne's Petition to Reopen the Record," which appears in the following words and figures, to-wit:

[H.I.]

In its Response, Petitioner argues that the *City of North Vernon* decision has no relevance to the matters at issue in this proceeding, and does not represent a material change of law. Petitioner points out that the decision relates to the respective statutory rights of a regional water and sewer district and a municipality providing sewer service outside of its corporate boundaries. Petitioner argues that the Court's decision in *City of North Vernon* does not represent a "material change of law" because the Court merely applied the provisions I.C. 13-26-5-7(b), which the Court characterized as "unambiguous." Last, Petitioner criticizes Intervenor for waiting to file its Verified Petition until February 9, 2004, although the court's opinion was issued two months earlier on


December 5, 2003.

Upon reviewing the Verified Petition and Petitioner's Responses, the presiding officers note that the *City of North Vernon* decision does not appear to be relevant to the case at hand. The case at hand involves a dispute between a municipality and an investor-owned utility, while the City of North Vernon involves a dispute between two political subdivisions of the state of Indiana. Moreover, the statutory provisions involved are unrelated. For example, nowhere in the City of North Vernon decision does the Court of Appeals even *mention* the Public Service Commission Act, or Title 8 for that matter. Petitioner made no credible arguments that would demonstrate the relevance of the City of North Vernon decision. Accordingly, the presiding officers determine that the Verified Petition to Reopen the Record should be denied.

IT IS SO ORDERED.

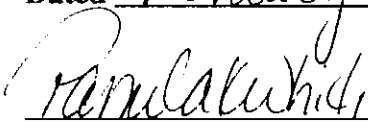


David E. Ziegner, Commissioner



Gregory S. Colton, Administrative Law Judge

Dated February 20, 2004



Nancy E. Manley, Secretary to the Commission